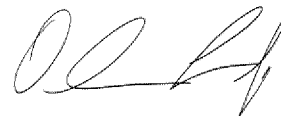


Form and Correctness Approved: **BAP**

Contents Approved:

By: _____
Office of the City AttorneyBy: _____
DEPT. Public Works

NORFOLK, VIRGINIA

Ordinance No. 48621

AN ORDINANCE AMENDING AND REORDAINING ORDINANCE NO.
48,495 **SO AS TO** AMEND EXHIBIT A ATTACHED TO THE
ORDINANCE.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Ordinance No. 48,495 entitled "An Ordinance Granting Nicholas Petrillo and Kathleen Petrillo Permission to Encroach into the Right-of-Way of 53rd Street Adjacent to 770 52nd Street with a Pier, and Approving the Terms and Conditions of the License Agreement" adopted by City Council on September 14, 2021, is hereby amended and reordained to replace Exhibit A attached to the ordinance with the attached exhibit labeled as "Amended Exhibit A to Ordinance No. 48,495".

Section 2:- That in all other respects, Ordinance No. 48,495 shall remain in full force and effect.

Attachments:

Exhibit A - Agreement (10 pages)

Adopted by Council January 11, 2022
Effective January 11, 2022

TRUE COPY

TESTE:

RICHARD ALLAN BULL

BY: _____
CHIEF DEPUTY CITY CLERK

LICENSE AGREEMENT

This **LICENSE AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 2021, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), and **NICHOLAS PETRILLO AND KATHLEEN PETRILLO** (the "Petrillos"), whose address is 770 52nd Street, Norfolk, Virginia 23508.

WITNESSETH:

1. **ENCROACHMENT AREA**: City hereby grants permission to the Petrillos to encroach into the right-of-way located adjacent to and north of the Petrillos's property located at 770 52nd Street with an open pile timber pier, as shown on Exhibit A attached hereto ("Encroachment Area").

2. **USE**: The Petrillos shall be permitted to repair, maintain and occupy the Encroachment Area for purposes of access, shoreline enhancements and pier installation and maintenance as described above and below, and for no other purpose.

3. **LICENSE ONLY; REVOCATION**: It is expressly understood that the permission granted hereby is a license only, conveys no rights to the Encroachment Area, and is revocable by Norfolk City Council at any time in its sole discretion. In the event of such revocation, the Petrillos shall immediately remove the encroaching structures and shall cease using the Encroachment Area.

4. **UTILITIES**: At the Petrillos's cost and expense, they are permitted to have utilities installed and maintained in the Encroachment Area. City shall not be responsible for any utilities installed and maintained within the Encroachment Area.

5. **REPAIRS**: The Petrillos shall keep and maintain the Encroachment Area in good and complete state of repair and condition. The Petrillos shall make all repairs and replacements of every kind to the pier located in the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and competent manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

6. **REQUIREMENTS OF PUBLIC LAWS**: The Petrillos shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state, and municipal laws, ordinances and regulations applicable to the structure, use, and occupancy of the Encroachment Area. In addition, the Petrillos shall be responsible for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

7. **RIGHT TO ENTER AND CURE**: City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area, ascertaining compliance with this Agreement, and making any repairs, which City deems necessary because of any failure of the Petrillos to meet their obligations under this Agreement. The cost of any such repairs shall be payable to the City on demand. Any entry upon the Encroachment Area for cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable

discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon the Petrillos's default in making repairs.

8. **NOTICE**: Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City: Department of General Services
232 E. Main Street, Suite 250
Norfolk, Virginia 23510

The Petrillos: Nicholas & Kathleen Petrillo
770 52nd Street
Norfolk, Virginia 23508

With copies to: City Attorney
900 City Hall Building
810 Union Street
Norfolk, Virginia 23510

Either party hereto may change their address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

9. **DESTRUCTION**: If the encroaching structure or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, such that it cannot be used for its intended purpose, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachment granted by this Agreement.

10. **NON-LIABILITY OF CITY**: City shall not be liable for any damage or injury which may be sustained by the Petrillos or any other person as a consequence of the Petrillos's use of the Encroachment Area, or by reason of the elements, or resulting from acts, conduct or omissions on the part of the Petrillos, or their agents, employees, guests, licensees, invitees, or on the part of any other person or entity.

11. **ALTERATIONS**: With the exception of the installation and maintenance of utilities (as noted in Section 4 above) the Petrillos covenants and agrees that they will not make any improvements, changes installations, renovations, additions, or alterations in and about the Encroachment Area without the prior written consent of the City. If the Petrillos install or make any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, the Petrillos hereby agree to remove, if requested by City, any improvements, additions, installations, and renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event the Petrillos fail to remove the improvements, additions, installations, renovations, and changes on or to the Encroachment Area when requested to do so by City, then the City may remove the improvements, additions, installations, renovations, and changes. The Petrillos shall be jointly and severally liable for paying for the cost of such removal.

12. **ASSIGNMENT AND SUBLETTING:** City and the Petrillos agree that the permission to encroach granted hereby is for the benefit of the Petrillos and may not be assigned by the Petrillos.

13. **SURRENDER:** The Petrillos will surrender possession of the Encroachment Area to City and remove all personal property therefrom upon termination of the permission granted hereby. The Petrillos shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of their use of the Encroachment Area.

14. **INSURANCE:** The Petrillos shall maintain in full force and effect General Liability ("GL") insurance with a combined single limit policy of bodily injury, death and property damage insurance of Two Hundred Fifty Thousand and 0/100 Dollars (\$250,000.00) per occurrence and Five Hundred Thousand and 0/100 Dollars (\$500,000.00) general aggregate insuring against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas. GL insurance shall be written on an approved ISO form for coverage in the Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and liability assumed under insured contract. The City, its officers, employees, agents and representatives shall be named as additional insured on any such policy. Coverage shall be evidenced by a Certificate of Insurance provided to the City within thirty (30) days after execution of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to City if the insurance is cancelled or modified. the Petrillos shall inform the City Attorney and the Department of General Services within fifteen (15) days of receiving such notice or cancellation, and immediately obtain coverage compliant with this Agreement.

15. **INDEMNIFICATION:** The Petrillos shall indemnify and save harmless City from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Encroachment Area by reason of any breach or nonperformance of any covenant or condition of this Agreement by the Petrillos's intentional act or negligence, and not caused in whole or in part by City. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees, incurred by City in the defense of such claims or incurred by City as a result of a breach of any provision of this Agreement by the Petrillos, but does not extend to circumstances caused in whole or in part by City.

16. **FIXTURES:** City covenants and agrees that no part of the improvements constructed, erected or placed by the Petrillos in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the City's property, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and the Petrillos to covenant and agree that all improvements of every kind and nature constructed, erected or placed by the Petrillos in the Encroachment Area shall be and remain the property of the Petrillos, unless such improvements are not removed upon termination of this Agreement.

17. **ENVIRONMENTAL:**

- (a) For purposes of this section:
 - (i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. § 6901 et seq.)

(RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) (CERCLA) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) “Release” means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

(iii) “Notice” means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPA) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the “environment,” as such terms are defined in CERCLA. “Notice” shall include the imposition of any lien on any real property, personal property or revenues of the Petrillos, including but not limited to the Petrillos’s interest in the Encroachment Area or any of the Petrillos’s property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) The Petrillos shall comply with all applicable federal, state, and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with all permits required thereunder, as well as under any successor or new environmental laws. Upon the receipt of any Notice, the Petrillos shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(c) The requirements of this section shall apply to any successor in interest to the Petrillos.

(d) The Petrillos hereby agree to defend (with counsel satisfactory to City), indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney’s fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from the Petrillos’s failure to comply strictly with the provisions of this section. The provisions of this section shall survive the termination of this permission granted by this Agreement.

18. **LIENS OR ENCUMBRANCES:** If because of any act or omission of the Petrillos any mechanic’s lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, the Petrillos shall, at their own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to the Petrillos of the filing thereof, and the Petrillos shall have the right to contest the validity of such lien if they so choose.

19. **APPLICABLE LAW:** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any

suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in Norfolk, Virginia.

20. **WAIVER OF TRIAL BY JURY:** To the extent permitted by law, City and the Petrillos mutually waive their rights to trial by jury in any action, proceeding, or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to the Petrillos by this Agreement.

21. **TITLES AND HEADINGS:** Titles and headings are inserted in this Agreement for reference purposes only and shall not be used to interpret the Agreement.

22. **SEVERABILITY:** Each provision of this Agreement must be interpreted in a way that is valid under applicable law. In the event that any provision or portion of this Agreement is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, such provision or portion shall be deemed reformed, insofar as is possible, to cure the defect and give maximum effect to the intent of the City and the Petrillos entering into this Agreement, and in any event the remainder of the Agreement shall continue in full force and effect.

23. **ENTIRE UNDERSTANDING:** This Agreement constitutes the entire understanding between or on behalf of the City and the Petrillos and supersedes any prior understandings and/or written or oral agreements between them or on their behalf respecting the subject matter herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein.

This Agreement may be modified or amended only by a writing signed and dated by both parties. All amendments shall be incorporated and made a part of this Agreement and attached hereto.

24. **AUTHORITY TO EXECUTE:** The terms of this Agreement are contractual and not mere recital, and the individuals executing this Agreement hereby represent and warrant that they have full and complete authority to covenant and agree as herein provided and to execute this Agreement on behalf of the Parties hereto.

25. **COUNTERPARTS:** The Agreement may be signed in counterparts. The Parties hereto agree that facsimile or email signatures shall have the full force and effect of original signatures.

IN WITNESS WHEREOF, the parties hereto have executed or have caused this License Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

NICHOLAS PETRILLO

KATHLEEN PETRILLO

CITY OF NORFOLK

By: _____
City Manager

Attest:

City Clerk

Approved as to Contents:

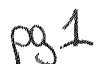
Director of Public Works

Approved as to Form and Correctness

Assistant City Attorney

Attachment: Amended Exhibit A (Ordinance No. 48621 : Encroachment with a Pier at 770 52nd Street - Amending Ordinance 48,495)

- Attachment: Amended Exhibit A (Ordinance No. 48621 : Encroachment with a Pier at 770 52nd Street - Amending Ordinance 48,495)



Packet Pg. 242



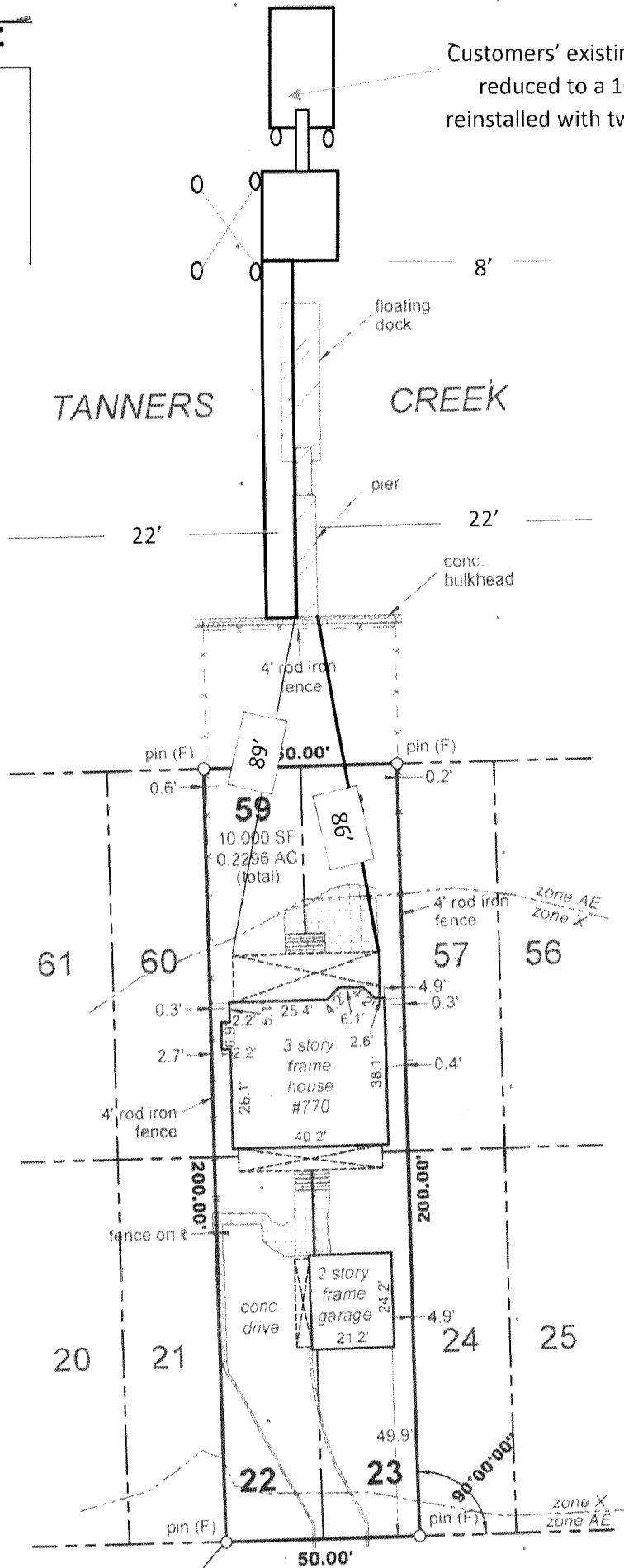
Nick Petrillo

770 W 52nd Street

Norfolk, VA 23508

March 2, 2021

REVISED 11/19/2021



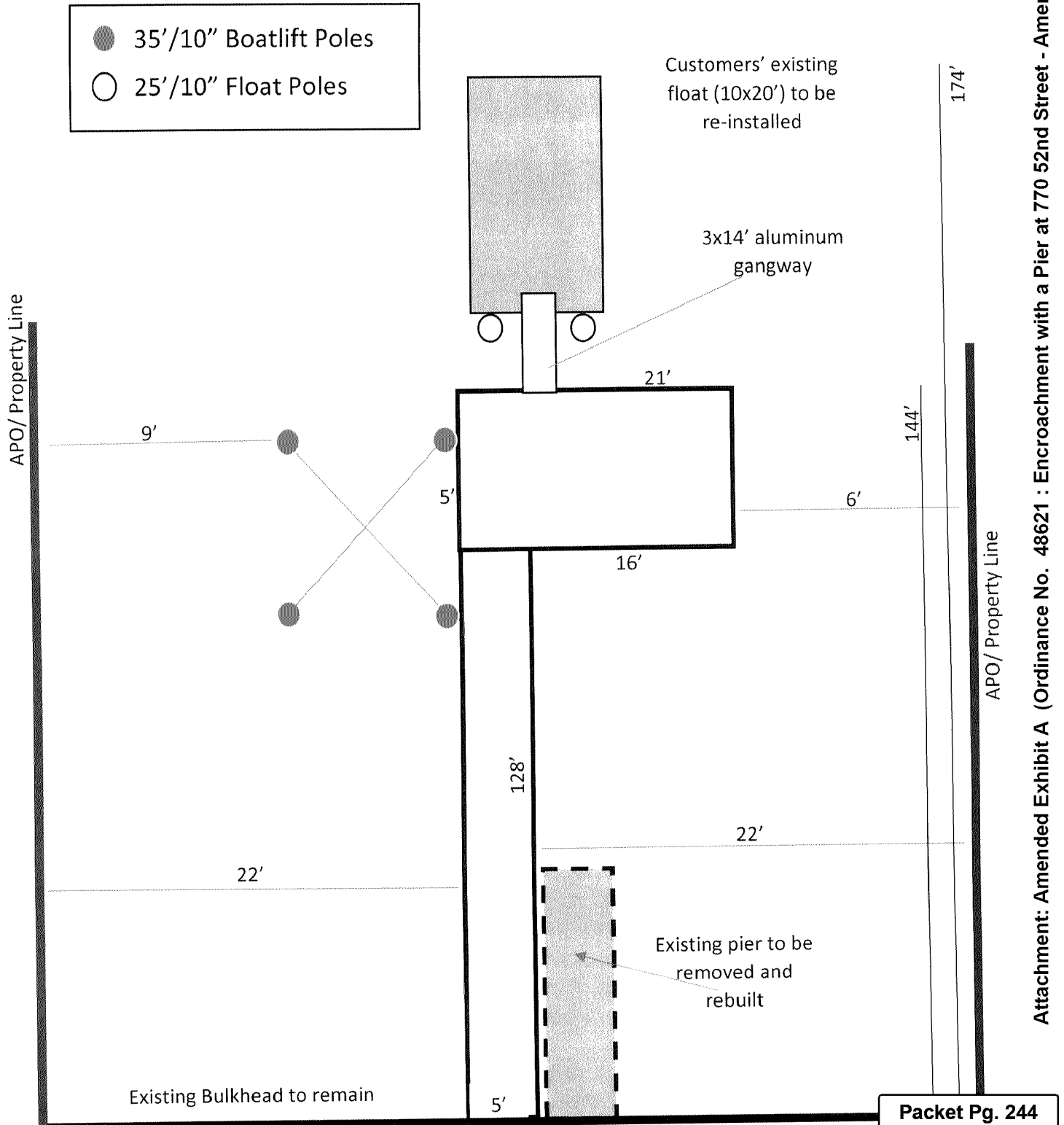


6.9.a

Nick Petrillo
770 W 52nd Street
Norfolk, VA 23517
202-878-0905
March 2, 2021

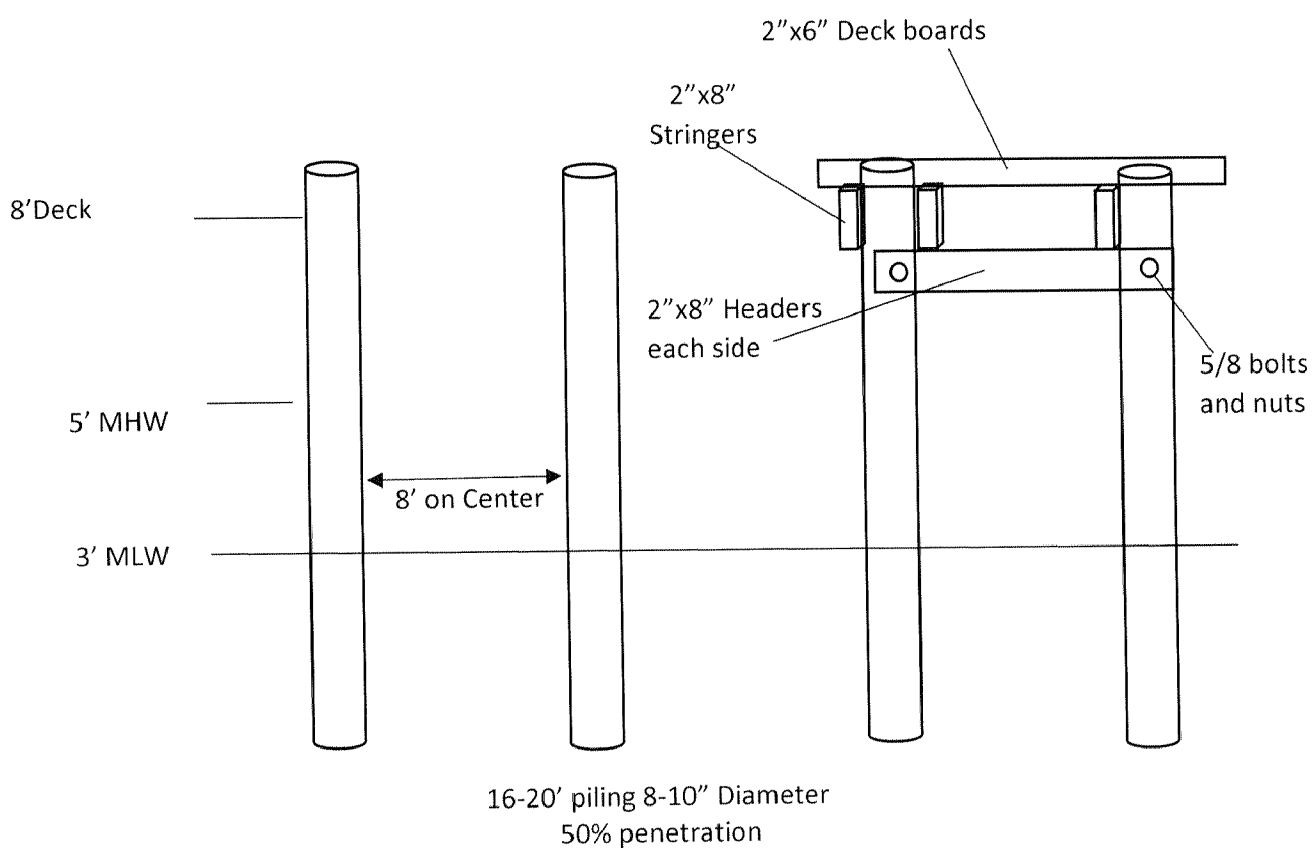
REVISED 11/19/2021

Attachment: Amended Exhibit A (Ordinance No. 48621 : Encroachment with a Pier at 770 52nd Street - Amending Ordinance 48,495)





Nick Petrillo
770 W 52nd St
Norfolk, VA 23508
March 2, 2021
REVISED 11/19/2021



- 1) Work to be completed by barge
- 2) Piling to be 2.5# marine grade, minimum 50% penetration
- 3) All hardware to be hot dipped galvanized
- 4) Headers and stringers to be 2x8" rough cut marine grade
- 5) Deck boards to be 2x6" southern yellow pine
- 6) Boatlift to be installed per manufacturer instructions

Description of Project only; NOT TO SCALE